

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLARD HAROLD HOPKINS,)	
)	
Plaintiff)	
)	
vs.)	Civil Action No. 07-745
)	
KEEFE COMMISSARY NETWORK SALES; and)	Judge Donetta W. Ambrose/
ALLEGHENY COUNTY JAIL;)	Magistrate Judge Amy Reynolds Hay
)	
Defendants)	
)	

MEMORANDUM ORDER

The above-captioned prisoner civil rights action was received by the Clerk of Court on June 4, 2007, and was referred to United States Magistrate Judge Amy Reynolds Hay for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation, Dkt. [3], filed on June 12, 2007, recommended that the complaint be dismissed pre-service pursuant to the Prison Litigation Reform Act. Plaintiff had claimed that the defendants charged exorbitant prices at the Jail's commissary and that the defendants conspired to do so. The Report recommended dismissal, finding that exorbitant prices charged at a penal institution's commissary implicates no federal constitutional right and hence fails to state a claim upon which relief can be granted. Service of the Report was made on Plaintiff at his place of confinement, at the Allegheny County Jail by first class mail. Plaintiff was informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, he had ten (10) days to file any objections. Rather than file objections, Plaintiff filed a document which the court construed as an amended complaint, wherein Plaintiff added a claim very similar to the claims he had raised in his original complaint. The amended complaint merely sought to

add to the original complaint and not supplant the original complaint. Plaintiff added a claim that the commissary charged him forty-seven cents for a stamped envelope when the proper amount of postage at the time was only thirty-nine cents. Plaintiff appended a receipt from the commissary which showed that for the price of a "large stamped envelope" the commissary charged forty-seven cents.

Nothing in the Plaintiff's amended complaint overcomes the reasoning of the Report. The fact that the Defendants charged not only for the cost of postage, but also for the envelope itself for a total cost of forty-seven cents does not deprive Plaintiff of any federal constitutional right. Accordingly, the court finds nothing in the amended complaint which would render the reasoning of the Report inapplicable. Hence the Report's reasoning with respect to the original complaint applies with equal force to the supplementing amended complaint.


After *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 12th day of July, 2007;

IT IS HEREBY ORDERED that the Plaintiff's complaint and supplementing amended complaint are dismissed pursuant to the Prison Litigation Reform Act for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that the Report and Recommendation, Dkt. [4] filed on June 19, 2007, by Magistrate Judge Hay, is adopted as the opinion of the court.

Lastly, the court certifies pursuant to 28 U.S.C. § 1915(a) that any appeal from this order would not be taken in good faith.


Donetta W. Ambrose
Chief United States District Judge

cc: The Honorable Amy Reynolds Hay
United States Magistrate Judge

Willard Harold Hopkins
Inmate Number 3838
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219